

MT LEGISLATIVE HISTORY

Chapter 326 1983

Bill H 5264

Original bill & hist. ☒ C

H. Committee on Taxation

S. Committee on Taxation

Hearing Date(s) MAR 12 ☒ C

Hearing Date(s) FEB 10 ☒ C

MAR 21 ☒ C

FEB 22 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out _____ ☐ C

FEB 22 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE BILL NO. 264

INTRODUCED BY GRAHAM, GALT

IN THE SENATE

January 24, 1983	Introduced and referred to Committee on Taxation.
January 25, 1983	Fiscal Note requested.
January 31, 1983	Fiscal Note returned.
February 22, 1983	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
February 23, 1983	Bill printed and placed on members' desks.
February 28, 1983	Second reading, pass consideration.
March 1, 1983	Second reading, pass consideration.
March 2, 1983	Second reading, do pass. Statement of Intent, do pass as amended.
March 3, 1983	Correctly engrossed.
March 4, 1983	Third reading, passed. Ayes, 46; Noes, 3. Transmitted to House.

IN THE HOUSE

March 7, 1983	Introduced and referred to Committee on Taxation.
March 21, 1983	Committee recommend bill be concurred in. Report adopted.

March 22, 1983

Second reading, concurred in.

March 23, 1983

Third reading, concurred in.

IN THE SENATE

March 24, 1983

Returned to Senate. Sent to enrolling.

Reported correctly enrolled.

1 *Sen. Bill No. 264*
2 INTRODUCED BY *Sen. HART*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT
5 OF REVENUE TO IMPUTE A VALUE ON COAL WHENEVER THE OPERATOR
6 OF A MINE SUBJECTS THE COAL TO PROCESSING THAT IMPROVES ITS
7 QUALITY; AMENDING SECTION 15-35-107, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 15-35-107, MCA, is amended to read:

11 "15-35-107. When value of coal may be imputed --
12 procedure. (1) The department may impute a value to the coal
13 which approximates market value f.o.b. mine in a case where:

14 (a) the operator of a coal mine is using the produced
15 coal in an energy-conversion or other manufacturing process;

16 (b) the operator of a coal mine refines the coal by
17 drying, cleaning, or other processing designed to improve
18 the quality of the coal;

19 ~~(b)(c)~~ a person sells coal under a contract which is
20 not an arm's-length agreement; or

21 ~~(c)(d)~~ a person neglects or refuses to file a
22 statement and tax return under this chapter.

23 (2) When imputing value, the department may apply the
24 factors used by the federal government under 26 U.S.C.,
25 section 613, or that provision as it may be labeled or

1 amended, in determining gross income from mining or the
2 department may apply any other or additional criteria it
3 considers appropriate. Each subject taxpayer shall upon
4 request by the department furnish a copy of its federal
5 income tax return, with any amendments, filed for the year
6 in which the value of coal is being imputed and copies of
7 the contracts under which it is selling coal at the time.
8 When the department's estimate of market value is contested
9 in any proceeding, the burden of proof is on the contesting
10 party."

-End-

STATE OF MONTANA

REQUEST NO. 229-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 19 83, there is hereby submitted a Fiscal Note for Senate Bill 264 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

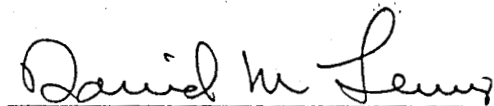
DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 264 allows the Department of Revenue to impute a value on coal whenever the operator of a mine subjects the coal to processing that improves its quality.

FISCAL IMPACT:

It is not anticipated that the proposed legislation will have a fiscal impact during the biennium because currently no coal producers are using a benefaction process to improve the quality of the coal.

FISCAL NOTE 8/V/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-31-83

1 STATEMENT OF INTENT

2 SENATE BILL 264

3 Senate Taxation Committee
4

5 It is the intent of SB 264 to give the Department of
6 Revenue authority to adopt rules to impute the market value
7 of coal prior to drying, cleaning or processing designed to
8 improve the quality of the coal. The rules adopted shall:

9 1. Allow the taxpayer to pay applicable taxes based on
10 market price of like coal prior to processing.

11 2. Impute market price regardless of whether the
12 processing takes place at the mine site or not.

13 3. Reflect that the intent is to exempt said
14 processing from applicable taxation.

SECOND READING

SB264

COMMITTEE ON TAXATION (SENATE)

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
252	1/21/83	2/8/83	3/1/83			2/28/83			
254	1/22/83	2/3/83	2/12/83		2/12/83				
263	1/24/83	2/14/83		Tabled on 3/1/83					
264	1/24/83	2/10/83	2/22/83			2/22/83	(Statement of intent also adopted)		
281	1/25/83	2/15/83	2/16/83	2/16/83					
283	2/19/83	2/28/83	3/1/83	2/28/83	(second reading copy) (This was sent to taxation from				
288	1/25/83	2/17/83		Tabled on 2/21/83				Natural Resources Comm.)	
299	1/27/83	2/11/83		Tabled on 2/23/83					
307	1/27/83	2/14/83	2/22/83		2/22/83	(as amended)			
329	1/31/83	2/10/83	Laid on the table on 2/12/83; reconsidered 2/19/83 and given DO NOT PASS;				SB 329 out of committee on 2/21/83.		
330	1/31/83	2/17/83	2/17/83			2/17/83			
334	2/1/83	2/16/83	2/19/83		2/19/83	(As amended, do not pass)			
335	2/1/83	2/14/83	2/23/83	2/23/83					
337	2/1/83	2/17/83	2/22/83		2/22/83				
342	2/3/83	2/16/83	2/16/83			2/16/83			
343	2/3/83	2/8/83		Tabled 2/28/83					
359	2/5/83	2/18/83	2/21/83		2/21/83				

(Use Separate Sheet for Senate, House Bills, and Resolutions)

(NOTE: These sheets indicate the status of the bills heard from time to time; the attached index indicates all of the dates on which the respective bills were discussed.)

CONSIDERATION OF SENATE BILL 264: Senator Carroll Graham, Senate District 29, sponsored this bill, which allows the Department of Revenue to impute a value on coal whenever the operator of a mine subjects the coal to processing that improves its quality. It may be necessary in the future as the coal mining process goes on. Certainly, we have had some problems with Spring Creek Mine, which has a high sodium content in the coal. A process may be developed to remove the sodium or sulphur which would remove 20% to 30% of the moisture. This would reduce the tonnage and lessen the transportation costs. Senator Graham submitted for the committee's review a statement of intent to accompany SB 264, and a copy is attached as Exhibit D. Senator Graham also submitted the following amendment to SB 264:

Page 1, line 12.

Following: "may"

Insert: ", or shall at the request of the taxpayer,"

PROPOSERS

Jim Mockler, representing the Montana Coal Council, said the purpose of the bill is so they can get into research of coal to improve the quality to sell higher grade coal. He asked that the statement of intent be adopted, which will direct the Department of Revenue to adopt regulations to allow a value of coal to be imputed. It is obvious that the coal producers cannot pay the tax and do the research, too. They want to pay on the value of coal. (See Exhibit E.)

Mike Fitzgerald, president of the Montana Trade Commission, submitted written testimony, attached as Exhibit F.

Tom Ebzery, representing NERCO from Billings, said they are an operator of Spring Creek Mine and a 50% interest holder in the Decker Mine. NERCO endorses SB 264, which will provide a marketing incentive for Montana coal. Coal can be enhanced by the beneficiation process, but due to cost, they can't do it at this time.

Pat Wilson, representing Montco/Thermal Energy, said her company would like to have a more competitive edge than they have today and therefore supported the bill.

OPPOSERS

There were no opposers to SB 264.

TECHNICAL INFORMATION

Dan Bucks from the Department of Revenue said they believe the bill should be amended to make it absolutely clear what is intended. He suggested the following amendment:

ROLL CALL

SENATE TAXATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/10 /

A.M. mtg.

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GOODOVER, CHAIRMAN	✓		
SENATOR McCALLUM, VICE CHAIRMAN	✓		
SENATOR BROWN	✓		
SENATOR CRIPPEN	✓		
SENATOR ELLIOTT	✓		
SENATOR GAGE	✓		
SENATOR TURNAGE	✓		
SENATOR SEVERSON	✓		
SENATOR HAGER	✓		
SENATOR ECK	✓		
SENATOR HALLIGAN	✓		
SENATOR LYNCH	✓		
SENATOR NORMAN	✓		
SENATOR TOWE	✓		
SENATOR MAZUREK	✓		

DATE February 10, 1983 A.M.COMMITTEE ON TAXATION

VISITORS' REGISTER

NAME (PLEASE PRINT)	REPRESENTING	BILL #	Check One	
			Support	Oppose
<i>K. Faulick</i>	<i>Rocky Mountain En.</i>	<i>264</i>	☒	☐
<i>Don Smith</i>	<i>MT STATE AFL-CIO</i>	<i>231</i>	☐	☒
<i>Don Mays</i>	<i>LOCAL 400 IUE</i>	<i>231</i>	☐	☒
<i>John Mays</i>	<i>Todd County</i>	<i>231</i>	☐	☒
<i>David (Pace)</i>	<i>Helena</i>	<i>329</i>	☐	☒
<i>William Beaul</i>	<i>Oil & Gas & Coal Counties</i>	<i>231</i>	☐	☒
<i>JO Biers</i>	<i>East Slope Taxpayers</i>	<i>231</i>	☐	☒
<i>Pat M... ..</i>	<i>Helena</i>	<i>264</i>	☒	☐
<i>John T... ..</i>	<i>NEIR</i>	<i>329</i>	☐	☒
<i>Don M... ..</i>	<i>Bozeman's Assoc.</i>	<i>329</i>	☐	☐
<i>Don M... ..</i>	<i>Bozeman Chamber of Commerce</i>	<i>329</i>	☐	☒
<i>Constance G. ...</i>	<i>The Port Harbor, Helena</i>	<i>329</i>	☐	☒
<i>Larry Lunde</i>	<i>Capital South Western</i>	<i>329</i>	☐	☒
<i>Bill B... ..</i>	<i>Glacier County</i>	<i>231</i>	☐	☒
<i>Brian Hoven</i>	<i>Hoven Equipment Company</i>	<i>329</i>	☐	☒
<i>Joe O'Neil</i>	<i>MSA Chamber Com</i>	<i>329</i>	☐	☒
<i>Michael ...</i>	<i>MT. Trade Law.</i>	<i>264</i>	☒	☐
<i>James M. ...</i>	<i>School Bd. of MT</i>	<i>231</i>	☐	☒
<i>GREG Allen</i>	<i>BY GEORGE MANS STORE</i>	<i>329</i>	☐	☒
<i>Paul ...</i>	<i>Bozeman's Assoc.</i>	<i>329</i>	☐	☒
<i>James G. Labaree</i>	<i>Mont. Retail Assoc.</i>	<i>329</i>	☐	☒
<i>Ed ...</i>	<i>MT Manufacturers Association</i>	<i>329</i>	☐	☒
<i>TOM FARRER</i>	<i>NERCO</i>	<i>264</i>	☒	☐
<i>Robert Johnson</i>	<i>East Slope Taxpayers Ass</i>	<i>231</i>	☐	☒
<i>Fred Johnson</i>	<i>Glacier Co</i>	<i>231</i>	☐	☒
<i>BERT WARD</i>	<i>Sheridan Co.</i>	<i>231</i>	☐	☒

(Please leave prepared statement with Secretary)

February 10, 1983

VISITORS' REGISTER

NAME (PLEASE PRINT)	REPRESENTING	BILL #	Check One	
			Support	Oppose
Donald Kiehl Co. Comm.	Glacier County	SB 231		X
Shula Kiehl	Glacier Co. taxpayer	SB 231		X
Michael J. Kiehl	" " "	SB 231		X
Jim R. Board	MEAT	231		X
Janelle Fallon	Mont. Chamber	231		X
Dave Birmingham	Mr. B's Kiddie Shop	329		X
Jim Mockler	MT. Coal Council	329		X
John R. ...	...	264	✓	
Gary Buchanan	Mont. Dept. of Commerce	229		✓
Kharr F...	Alt Beer & Wine Wholesaler	220		✓
Dennis B...	Moortay	329		✓
Arthur Rambo	Hill Co	231		✓

(Please leave prepared statement with Secretary)

SENATE TAXATION COMMITTEE
EXHIBIT <u>D</u>
<u>Feb 10</u> , 198 <u>3</u>
<u>Senate</u> BILL/RES- <u>264</u>

STATEMENT OF INTENT
SENATE BILL 264
Taxation Committee

It is the intent of SB 264 to give the Department of Revenue authority to adopt rules to impute the market value of coal prior to drying, cleaning or processing designed to improve the quality of the coal. The rules adopted shall:

1. Allow the taxpayer to pay applicable taxes based on market price of like coal prior to processing.
2. To impute market price regardless of whether the processing takes place at the mine site or not.
3. To reflect that the intent is to exempt said processing from applicable taxation.

NAME: James D. Mackler DATE: 2/10

ADDRESS: 2301 Colonial Dr

PHONE: 442-6223

REPRESENTING WHOM? MT. Coal Council

APPEARING ON WHICH PROPOSAL: SB 264

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE TAXATION COMMITTEE
EXHIBIT <u>E</u>
<u>Feb 10</u> , 198 <u>3</u>
<u>Sen</u> BILL/RES. <u>264</u>

2/10

SENATE TAXATION COMMITTEE
EXHIBIT <u>F</u>
<u>Feb 10</u> , 198 <u>3</u>
<u>Senate</u> BILL/RES <u>264</u>

TESTIMONY

ON SENATE BILL 264

By

Mike Fitzgerald

President

MONTANA TRADE COMMISSION

Suite 612 Power Building

Helena, Montana

Before the Senate Taxation Committee

10 February 1983

Helena, Montana

WORLD COAL RESERVES*

Total Estimated	11,500 Billion Metric Tons
Measured Reserves	1,300 Billion Metric Tons
Economically Recoverable	740 Billion Metric Tons
(High Heating Value Coal Reserves)	600 Billion Metric Tons ¹

The following five regions have 95% of these known reserves:

North America	@ 31%	229.40 Billion Metric Tons
USSR And Satellites	@ 26%	192.40 Billion Metric Tons
Western Europe	@ 17%	125.80 Billion Metric Tons
China	@ 15%	111.00 Billion Metric Tons
Australia	@ 6%	<u>44.40 Billion Metric Tons</u>
Total	@ 95% or	<u>@ 703 Billion Metric Tons</u>

*World Coal Production; Scientific American 1-79; Volume 240, Number 1; PP. 38-47.

¹740 Billion Metric Tons Adjusted for Inferior Heating Quality Coal to 600 Billion Metric Tons.

ECONOMICALLY RECOVERABLE COAL RESERVES
IN SELECTED WESTERN STATES*

STATE	ANTHRACITE (000 Tons)	BITUMINOUS AND LIGNITE (000 Tons)	TOTAL (000 Tons).
Arizona	-	350,000	350,000
Colorado	27,700	14,841,500	14,869,200
Montana	-	108,396,200	108,396,200
New Mexico	2,300	4,392,500	4,394,800
North Dakota	-	16,003,000	16,003,000
South Dakota	-	428,000	428,000
Texas	-	3,271,900	3,271,900
Utah	-	4,420,500	4,420,500
Washington	-	1,954,000	1,954,000
Wyoming	-	53,336,100	53,336,100
WESTERN STATES TOTAL	30,000	207,393,700	207,423,700

*Communication with George Krimpasky, United States Bureau of Mines, Helena, Montana (1974 Data).

MONTANA COAL PRODUCTION

<u>MINES</u>	<u>1979 (Tons)</u>	<u>1981</u>
Coal Creek	63,858	64,142
Decker East	5,492,702	5,350,113
Decker West	5,422,588	5,277,648
Knife River	297,694	204,492
Western Energy	10,220,911	10,352,966
PM	11,081	7,404
Westmoreland	4,974,984	4,450,296
Spring Creek	94,368	4,368,885
Peabody	2,909,320	3,193,570
Beartooth	7,321	Closed
Divide	<u>8,245</u>	<u>8,165</u>
Total 1979 Production	<u>29,503,072</u> (1)	<u>33,277,681</u> (2)

32,100,000
1982

Source: State Department Of Lands (1)
By WESCO Resources.

Montana Coal Council (2)

1993
28,000,000

PROJECTED/ADJUSTED

Montana Coal Production (1979-2000)
(Million Tons)

<u>1970</u>	<u>1975</u>	<u>1980</u>	<u>1990</u>	<u>2000</u>
3.5	22.1	36.4	128.5(1)	270.1(1)
			280 (2)	

1981 Adjusted Estimates for the Year 2000

100 Million Tons Annually
Total Estimated Montana Coal Production

Source: (1) Montana State Department of Lands
(2) U.S. Department of Energy

MONTANA COAL PRICES FOB MINE

Montana steam coal averages about 8600 BTU's per pound. At \$10.00 per ton Montana sub-bituminous steam coal averages about .58¢ per million BTU's which, at the mine, is one of the least expensive energy sources in the world.

HYPOTHETICAL CASE

Estimated delivered price
of Montana Coal in Tokyo.

<u>1982</u>	
\$ 10.00	Per Ton FOB Mine
22.00	Rail Freight
6.00	Port Loading
11.00	Ocean Freight
6.00	Port Off Loading (Japan)
\$ 55.00	Delivered Tokyo - or about \$3.19 per million BTU's. ¹

Australia, the largest supplier to Japan is now delivering 12,000 BTU per pound steam coal to Tokyo for \$65.00 per ton or about \$2.70 per million BTU.

1) Source: Westmoreland Resources - February, 1983.

By increasing the BTU value of Montana's coal we could become more competitive in U.S. and international markets and likely sell more coal.

If Montana coal producers could increase the BTU value of their coal and increase the FOB mine mouth price by 10%, look what happens to the price delivered in Japan ($\$55.00 \times 10\% = \60.50 Tokyo).₁

- 9,000 BTU Coal equals @ \$3.36 per mm BTU
- 10,000 BTU Coal equals @ \$3.00 per mm BTU
- 11,000 BTU Coal equals @ \$2.75 per mm BTU
- 12,000 BTU Coal equals @ \$2.52 per mm BTU

- 1) Price per million BTU's is calculated by dividing the price by the Ton x BTU value:

$$\begin{aligned} & \$60.50 \\ & \div 2000 \text{ lbs (ton)} \times 9000 \text{ BTU} \\ & \hline & = \$3.36 \text{ per million BTU's} \end{aligned}$$

1982 Montana coal production was 32,160,075 tons. 1982 coal severance taxes totaled \$86,186,845.61.

- Increasing Montana's 1982 coal production by 10 million additional tons annually by 1990 at an average price per ton of \$10.00 would increase annual coal severance tax revenues by an additional \$30 million.
- Increasing 1982 production by an additional 25 million tons annually by 2000 at an average price per ton of \$12.00 would increase annual coal severance tax revenues by an additional \$100 million.

Montana coal producers are competing in the world market with coal producers from Canada, South Africa, Poland, Australia and the Soviet Union and China in the not too distant future.

To increase sales of Montana coal we must improve the delivered price per million BTU's. Only two ways are possible to do so.

- Coal benefaction can increase the BTU content of the coal at the mine.
- Competitive transportation. We have only one railroad serving the largest coal deposit in the U.S. Because of the demise of the Milwaukee Railroad we are not likely to ever again have competitive rail transportation.
- Raising the BTU content of the coal may be one of the only strategies Montana coal producers can use to become more competitive.
- To apply the state coal severance tax to the added value of Montana coal would neutralize the potential competitive edge of the Montana producers. Likewise, not to tax the benefacted value may serve as an investment incentive to Montana coal producers.
- I recommend that the state coal severance tax not be applied to the increased value of Montana coal by benefaction or a similar process.

LL

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 22, 1983

The thirty-third meeting of the Taxation Committee was called to order at 8:05 a.m. by Chairman Pat M. Goodover in Room 415 of the Capitol Building.

ROLL CALL: All members were present.

DISPOSITION OF SENATE BILL 264: Senator Elliott moved that the statement of intent attached to the February 10, 1983 (a.m.) minutes as Exhibit D be adopted. The motion was seconded and carried unanimously.

Jim Mockler, from the Montana Coal Council, explained the amendments attached as Exhibit A to these minutes. Dan Bucks, representing the Department of Revenue, agreed with the amendments. Cort Harrington, the committee's staff attorney, said the amendments met with his approval also.

Senator Crippen moved that the amendments be adopted. The motion was seconded.

Senator Norman asked what the imputed value of a \$5 ton of coal would be. Mr. Mockler said he didn't know off hand.

Senator Towe noted that the value is being set up f.o.b. mine. Mr. Mockler stated that the Department of Revenue asked that that be in there. Mr. Bucks said that when they worked on these amendments, they appended language directly to (1)(b) (see amendment #2 on Exhibit A). An alternative would be to add ", provided that in this case, market value f.o.b. mine means"

A vote was taken on Senator Crippen's motion, and it passed unanimously.

Senator Halligan moved that SB 264 DO PASS AS AMENDED. The motion was seconded and passed, with Senator Towe voting no.

JOINT CONSIDERATION OF SENATE BILLS 263 and 335: Senator Towe said SB 335 is unconstitutional because of the retroactive application to refunds. Senator Goodover asked what changes the figures from county to county. Senator Towe said his bill taxes income; Senator Turnage's bill taxes deposits. Senator Towe went through the materials marked Exhibit B concerning banks' deposits and taxes and the differences between SB 335, SB 263, and HB 536. Do you want to tax based on income even though we're talking about property tax, or do you want to tax on the size of the institution, he asked. It would be a mistake to go

ROLL CALL

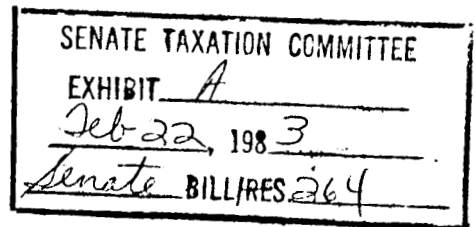
SENATE TAXATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/22/

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GOODOVER, CHAIRMAN	✓		
SENATOR McCALLUM, VICE CHAIRMAN	✓		
SENATOR BROWN	✓		
SENATOR CRIPPEN	✓		
SENATOR ELLIOTT	✓		
SENATOR GAGE	✓		
SENATOR TURNAGE	✓		
SENATOR SEVERSON	✓		
SENATOR HAGER	✓		
SENATOR ECK	✓		
SENATOR HALLIGAN	✓		
SENATOR LYNCH	✓ 8:55		
SENATOR NORMAN	✓		
SENATOR TOWE	✓		
SENATOR MAZUREK	✓		



PROPOSED AMENDMENT TO SB 264

1. Page 1, line 12.

Following: "The department may"

Insert: "or shall at the request of the taxpayer"

2. Page 1, line 23.

Following: line 22

Insert: "(2) For purposes of subsection (1)(b), market value f.o.b. mine means the value of the coal subsequent to primary and secondary crushing but prior to drying, cleaning or other processing."

Renumber subsequent subsections

3. Page 2.

Following line 10

Insert: "NEW SECTION Section 2. Use of imputed value for coal gross proceeds. Whenever value is imputed under 15-35-107(1)(b) that value shall be used for purposes of reporting the value of the gross yield of coal under 15-23-701.

NEW SECTION Section 3. Codification instruction. Section 2 is intended to be codified as an intergral part of Title 15, Chapter 23, Part 7 and the provisions of Title 15, Chapter 23, Part 7 apply to section 2."

STANDING COMMITTEE REPORT

February 22 19 83

MR.PRESIDENT.....

We, your committee ontaxation.....

having had under considerationStatement of Intent,SenateBill No. 264.....

Respectfully report as follows: ThatStatement of Intent,SenateBill No. 264.....
be adopted.

STATEMENT OF INTENT RE: SB 264

It is the intent of SB 264 to give the Department of Revenue authority to adopt rules to impute the market value of coal prior to drying, cleaning or processing designed to improve the quality of the coal. The rules adopted shall:

1. Allow the taxpayer to pay applicable taxes based on market price of like coal prior to processing.
2. Impute market price regardless of whether the processing takes place at the mine site or not.
3. Reflect that the intent is to exempt said processing from applicable taxation.

DO PASS

1/c

February 22

19.83

MR. PRESIDENT

We, your committee on taxation

having had under consideration Senate Bill No. 264

Respectfully report as follows: That Senate Bill No. 264

introduced bill, be amended as follows:

1. Page 1, line 12.

Following: "The department may"

Insert: "or shall at the request of the taxpayer"

2. Page 1, line 23.

Following: line 22

Insert: "(2) For purposes of subsection (1)(b), market value f.o.b. mine means the value of the coal subsequent to primary and secondary crushing but prior to drying, cleaning or other processing."

Renumber: subsequent subsections

XDO PASS
XXXXXXX

(Continued on page 2)

Chairman.

SB 264

February 22 1983

3. Page 2.

Following: line 10

Insert: "NEW SECTION. Section 2. Use of imputed value for coal gross proceeds. Whenever value is imputed under 15-35-107(1)(b) that value shall be used for purposes of reporting the value of the gross yield of coal under 15-23-701.

NEW SECTION. Section 3. Codification instruction. Section 2 is intended to be codified as an integral part of Title 15, chapter 23, part 7 and the provisions of Title 15, chapter 23, part 7 apply to section 2."

And, as so amended

DO PASS

STATUS SHEET

TAXATION

COMMITTEE

48th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 243	AN ACT TO PROVIDE FOR A 5-YR STATUTE OF LIMITATIONS FOR TXS. ON CENTRALLY ASSESSED PROPERTY COAL SEV. TAXES, OIL & GAS SEV. TAXES, MINING LIC. TAX	3-1-83	Towe	3-11-83	BE CONCURRED IN	3-11-83
SB 244	AN ACT REQUIRING A SEPARATE TAX ON CERTAIN LUMP-SUM DISTRIBUTION PAYMENTS.....	3-3-83	Towe	3-14-83	BE CONCURRED IN	3-22-83
SB 247	AN ACT TO CLARIFY THAT RAILRD. RETIREMENT ACT BENEFIT PYMNTS. RECEIVED DURING CLAIM PERIODS BEGINNING IN 1981 OR 1982 AS A RESULT OF FULFILLMENT OF FED. S.S. REQUIREMENTS ARE NOT TO BE INCLUDED AS INCOME....	3-1-83	Brown, B.	3-7-83	BE CONCURRED IN	3-15-83
SB 250	AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE BD OF HSG AUTHORIZING THE ISSUANCE OF TXBLE OR TAX EXEMPT BONDS.....	3-3-83	Goodover	3-14-83	TAKEN OUT OF THIS COMMITTEE AND REFERRED TO ANOTHER COMMITTEE	
SB 252	AN ACT PROVIDING FOR AN INVEST CREDIT AGAINST THE INDIVIDUAL INCOME TAX AND THE CORPORATE LICENSE TAX.....	3-7-83	Goodover	3-14-83	TABLED	3-21-83
SB 264	AN ACT TO ALLOW THE DEPT. OF REVENUE TO IMPUTE A VALUE ON COAL WHENEVER THE OPERATOR OF A MINE SUBJECTS THE COAL TO PROCESSING THAT IMPROVES ITS QUALITY	3-7-83	Graham	3-17-83	BE CONCURRED IN	3-21-83

is our best legal position. He said he is impressed with the good faith the banks have shown.

Questions from the committee were heard.

REPRESENTATIVE WILLIAMS asked Senator Towe if he would support the amendment proposed by the Department of Revenue. Senator Towe said he would prefer that question be answered by the banks. He said he would rather not get into that issue. It has been said that would not fit in with the title of the bill and that may be true and would present a serious problem.

The hearing on SB 335 was closed.

SENATE BILL 264

SENATOR CARROLL GRAHAM, District 29, sponsor of the bill, said SB 264 is an act to allow the Department of Revenue to impute a value on coal whenever the operator of a mine subjects the coal to processing that improves its quality. He said most of the coal in Montana runs about a 25% moisture content. If that coal was run through some of the processes, that moisture content would be reduced to about 5%. More coal could be shipped to the power plants. The intent of the bill is to allow the taxpayer to pay applicable taxes based on market price of like coal prior to processing and to impute a market price regardless of whether the processing takes place at the mine site or not.

Proponents

JIM MOCKLER, Executive Director of the Montana Coal Council, said SB 264 prevents an added value tax. It is not feasible to build a processing plant to process coal and then have to pay an extra 30% on the value for taxes.

TOM EBZERY, representing NERCO, Inc., said SB 264 establishes incentives for a coal company to improve the quality of its product by the use of beneficiation processes. Enhancing the quality and value of raw Montana coal could be a giant step towards marketing it in areas where Powder River Basin coal generally is not now competitive. Mr. Ebzery read a prepared statement to the committee. (See EXHIBIT 8.)

MIKE FITZGERALD, President of the Montana Trade Association, testified in favor of SB 264. He passed out copies of information concerning coal in Montana and went over that handout with the committee. (See EXHIBIT 9.)

There were no opponents testifying against SB 264.

SENATOR GRAHAM, in closing, offered an amendment to SB 264. On page 2, line 1, following "crushing" he proposed to insert "and to oiling". (See EXHIBIT 10.)

The hearing on SB 264 was closed.

SENATE BILL 283

SENATOR DAVE FULLER, District 15, sponsor of the bill, said SB 283 is an act providing a tax credit for the installation of solar energy systems in Montana; defining such systems; and providing rulemaking authority to establish criteria for such systems.

SENATOR FULLER passed out copies of EXHIBIT 11, which are amendments to SB 283.

SENATOR FULLER said there are 200 businesses in Montana that would be affected by this and could take advantage of the tax credit.

SENATOR FULLER said the total amount of credit available to any taxpayer may not exceed \$1,000 per solar energy system.

SENATOR FULLER said, in his opinion, there will not be a negative impact on tax revenues - in fact, it might go the other way.

Proponents

SENATOR MIKE HALLIGAN, District 48, said the tax credit will help out residential people but will also help out the agricultural people. The more alternative energy we use, the more gas and fossil fuels there will be left for future generations.

CURT HARDING, President of the Montana Solar Energy Industries Association, said, according to California studies on the available energy tax credits, for every \$1 of tax revenue lost to the state of California, \$7 was generated in new revenue. Rather than maintaining those same patterns for Montana, one could assume at least half of that amount will be generated in Montana.

DON REED, representing the Montana Environmental Information Center, passed out copies of EXHIBIT 12 which shows how Montana compares to other states with personal tax credits for energy conservation and renewable energy systems.

JIM MCNAIRY, representing the Alternative Energy Resources Organization, said Montana has a good supply of energy alternatives. He said Montana's current energy tax credit is 5% with a \$125 ceiling, for residential taxpayers only. The proposed credit would be 20% for residential and 25% for other uses, both with a \$1,000 ceiling. He passed out a fact sheet in support of SB 283. (See EXHIBIT 13.) He said Montana has the lowest level of tax credits (for energy) of any of the 27 states on the books.

NERCO Testimony on SB264

Before the

Montana House Committee on Taxation

March 17, 1983

Introduction

Mr. Chairman, for the record, I am Tom Ebzery, an attorney from Billings, representing NERCO, Inc. I have been asked by my principal to make the following statement on behalf of Gerard K. Drummond, President of NERCO, Inc.

NERCO Inc. is the mining and resource development subsidiary of Pacific Power and Light Company. NERCO is the owner and operator of Spring Creek Coal Company, and fifty percent owner of the Decker Coal Mine located in Big Horn County.

Purpose

I am here today to express NERCO's support for SB 264 sponsored by Senator Graham. This Bill establishes economic incentives for a coal company to improve the quality of its product by the use of beneficiation processes. Enhancing the quality and value of raw Montana coal could be a giant step towards marketing it in areas where Powder River Basin coal generally is not now competitive.

Market Factors

It is a fact that the overall market for steam coal is depressed at this time. However, there are several other important factors which uniquely affect the marketability of Powder River Basin coal.

First, the market advantage of low-sulfur "compliance coal" was virtually eliminated by amendments to the Clean Air Act in 1977 requiring all new coal-fired plants to use scrubbers. This enhanced the market for high-sulfur coal located closer to major consuming areas.

Second, escalating rail rates have turned the remote location of Powder River Basin coal one thousand miles from major markets into a great disadvantage. Anywhere from two-thirds to three-fourths of the total delivered cost of the product is attributable to transportation.

Third, diligent development requirements imposed upon existing leases have promoted increased supply even though demand has lagged, placing downward pressure on price.

Finally, Powder River Basin coal is lower in Btus than coal from many other regions. Foreign export and domestic industrial consumers prefer and often require fairly high Btu values for steam coal. At this time, Utah and Colorado coals are clearly better suited for some of these markets because of their significant Btu advantage and proximity to consumers.

The question then is, how can Montana coal compete? We believe that coal beneficiation can open the door to new markets for our product.

Coal Beneficiation

Coal beneficiation is the use of drying, cleaning, or other similar technology to improve the quality of raw coal. Coal beneficiation processes are fairly common not only in the United States but throughout the coal producing countries of the world.

The basic techniques developed to enhance coal quality are cleaning and drying. Cleaning reduces the mineral and sulfur matter in coal to control ash and sulfur dioxide. This helps utilities operate boilers and pollution control devices more efficiently.

- A second technique is thermal drying which increases Btu value by reducing the moisture content of coal. In the Powder River Basin, 20 to 30 percent of the total weight of coal can be comprised of internal or inherent moisture. Therefore, reducing inherent moisture to increase the heating value of the coal would significantly enhance the product.

The process of removing moisture from coal is very common in the eastern United States and has been used by eastern producers. This process is technologically straight forward and affordable for eastern producers because moisture is on the surface of the coal. However, the moisture of Powder River Basin coal is locked inside the coal and, consequently, the technological complexity and cost of drying is much greater.

NERCO and other coal producers are currently involved in research and development of coal beneficiation processes to overcome these problems. We are specifically looking at coal drying technology for our Spring Creek Mine. At the present time we are conducting a pilot project which implements state-of-the-art thermal drying technology. However, current economics may preclude commercialization of this technology in Montana.

Description of the Bill

Senate Bill 264 would do much to remove the economic obstacles encountered by those who would develop coal beneficiation technology in Montana. The bill creates the necessary economic incentive to improve Montana coal and make it more competitive without reducing existing coal tax revenues.

The bill would not provide tax relief for those processes which are currently taxed including primary and secondary crushing, loading and storage. Senate Bill 264 will simply direct the Department of Revenue to exclude from applicable taxes the increase in contract sales price that results from coal beneficiation. The ultimate effect may be that more coal can be sold in the next few years resulting in significantly improved revenues and more jobs for Montana.

We support Senator Graham's proposal and stand prepared to work with the Legislature and state government to improve the marketability of Montana coal.

TESTIMONY

ON SENATE BILL 264

BY

MIKE FITZGERALD

President

MONTANA TRADE COMMISSION

Suite 612 - Power Building

Helena, Montana

Before the House Taxation Committee

March 17, 1983

Helena, Montana

WORLD COAL RESERVES*

Total Estimated	11,500 Billion Metric Tons
Measured Reserves	1,300 Billion Metric Tons
Economically Recoverable	740 Billion Metric Tons
(High Heating Value Coal Reserves)	600 Billion Metric Tons ¹

The following five regions have 95% of these known reserves:

North America	@ 31%	229.40 Billion Metric Tons
USSR And Satellites	@ 26%	192.40 Billion Metric Tons
Western Europe	@ 17%	125.80 Billion Metric Tons
China	@ 15%	111.00 Billion Metric Tons
Australia	@ 6%	44.40 Billion Metric Tons
Total	@ 95% or @	<u>703 Billion Metric Tons</u>

*World Coal Production; Scientific American 1-79; Volume 240, Number 1; PP. 38-47.

¹740 Billion Metric Tons Adjusted for Inferior Heating Quality Coal to 600 Billion Metric Tons.

ECONOMICALLY RECOVERABLE COAL RESERVES
IN SELECTED WESTERN STATES*

STATE	ANTHRACITE (000 Tons)	BITUMINOUS AND LIGNITE (000 Tons)	TOTAL (000 Tons)
Arizona	-	350,000	350,000
Colorado	27,700	14,841,500	14,869,200
Montana	-	108,396,200	108,396,200
New Mexico	2,300	4,392,500	4,394,800
North Dakota	-	16,003,000	16,003,000
South Dakota	-	428,000	428,000
Texas	-	3,271,900	3,271,900
Utah	-	4,420,500	4,420,500
Washington	-	1,954,000	1,954,000
Wyoming	-	53,336,100	53,336,100
WESTERN STATES TOTAL	30,000	207,393,700	207,423,700

*Communication with George Krimpasky, United States Bureau of Mines, Helena, Montana (1974 Data).

MONTANA COAL PRODUCTION

<u>MINES</u>	<u>1979 (Tons)</u>	<u>1981</u>
Coal Creek	63,858	64,142
Decker East	5,492,702	5,350,113
Decker West	5,422,588	5,277,648
Knife River	297,694	204,492
Western Energy	10,220,911	10,352,966
PM	11,081	7,404
Westmoreland	4,974,984	4,450,296
Spring Creek	94,368	4,368,885
Peabody	2,909,320	3,193,570
Beartooth	7,321	Closed
Divide	<u>8,245</u>	<u>8,165</u>
Total 1979 Production	<u>29,503,072</u> (1)	<u>33,277,681</u> (2)

Source: State Department Of Lands (1)
By WESCO Resources.

Montana Coal Council (2)

PROJECTED/ADJUSTED

Montana Coal Production (1979-2000)
(Million Tons)

<u>1970</u>	<u>1975</u>	<u>1980</u>	<u>1990</u>	<u>2000</u>
3.5	22.1	36.4	128.5(1)	270.1(1)
			280 (2)	

1981 Adjusted Estimates for the Year 2000

100 Million Tons Annually
Total Estimated Montana Coal Production

Source: (1) Montana State Department of Lands
(2) U.S. Department of Energy:

MONTANA COAL PRICES FOB MINE

Montana steam coal averages about 8600 BTU's per pound. At \$10.00 per ton Montana sub-bituminous steam coal averages about .58¢ per million BTU's which, at the mine, is one of the least expensive energy sources in the world.

HYPOTHETICAL CASE

Estimated delivered price
of Montana Coal in Tokyo.

<u>1982</u>	
\$ 10.00	Per Ton FOB Mine
22.00	Rail Freight
6.00	Port Loading
11.00	Ocean Freight
6.00	Port Off Loading (Japan)
\$ 55.00	Delivered Tokyo - or about \$3.19 per million BTU's. ¹

Australia, the largest supplier to Japan is now delivering 12,000 BTU per pound steam coal to Tokyo for \$65.00 per ton or about \$2.70 per million BTU.

1) Source: Westmoreland Resources - February, 1983.

By increasing the BTU value of Montana's coal we could become more competitive in U.S. and international markets and likely sell more coal.

If Montana coal producers could increase the BTU value of their coal and increase the FOB mine mouth price by 10%, look what happens to the price delivered in Japan ($\$55.00 \times 10\% = \60.50 Tokyo).₁

- 9,000 BTU Coal equals @ \$3.36 per mm BTU
- 10,000 BTU Coal equals @ \$3.00 per mm BTU
- 11,000 BTU Coal equals @ \$2.75 per mm BTU
- 12,000 BTU Coal equals @ \$2.52 per mm BTU

- 1) Price per million BTU's is calculated by dividing the price by the Ton x BTU value:

$$\begin{array}{r} \$60.50 \\ \div 2000 \text{ lbs (ton)} \times 9000 \text{ BTU} \\ \hline = \$3.36 \text{ per million BTU's} \end{array}$$

1982 Montana coal production was 32,160,075 tons. 1982 coal severance taxes totaled \$86,186,845.61.

- Increasing Montana's 1982 coal production by 10 million additional tons annually by 1990 at an average price per ton of \$10.00 would increase annual coal severance tax revenues by an additional \$30 million.
- Increasing 1982 production by an additional 25 million tons annually by 2000 at an average price per ton of \$12.00 would increase annual coal severance tax revenues by an additional \$100 million.

Montana coal producers are competing in the world market with coal producers from Canada, South Africa, Poland, Australia and the Soviet Union and China in the not too distant future.

To increase sales of Montana coal we must improve the delivered price per million BTU's. Only two ways are possible to do so.

- Coal benefaction can increase the BTU content of the coal at the mine.
- Competitive transportation. We have only one railroad serving the largest coal deposit in the U.S. Because of the demise of the Milwaukee Railroad we are not likely to ever again have competitive rail transportation.
- Raising the BTU content of the coal may be one of the only strategies Montana coal producers can use to become more competitive.
- To apply the state coal severance tax to the added value of Montana coal would neutralize the potential competitive edge of the Montana producers. Likewise, not to tax the benefacted value may serve as an investment incentive to Montana coal producers.
- I recommend that the state coal severance tax not be applied to the increased value of Montana coal by benefaction or a similar process.

COMMITTEE OF THE WHOLE AMENDMENT

EXHIBIT 10
3-17-83

MR. CHAIRMAN: I MOVE TO AMEND SB 264

Page 2

line 1

Following: "Crushing"
insert: "and to oiling"

VISITOR'S REGISTER

HOUSE

Taxation

COMMITTEE

BILL

SB 2041

DATE _____

17 Mar 83

SPONSOR

Canal Graham

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

4. Oil Tax Trust Interest - There was a \$2 million difference between the LFA and OBPP estimates. The subcommittee asked the two offices to recalculate, using the LFA's interest figure of 10%.
5. Individual Income Tax - The subcommittee recommended using the LFA's figure of \$227,549.

The School Equilization Fund was adjusted accordingly with the changes recommended above.

The final biennium general fund revenue estimate for the OBPP is \$713.257 and that is the amount being recommended by the Taxation Subcommittee on HJR 33. (See EXHIBITS 1, 2 and 3.)

REPRESENTATIVE NILSON moved HJR 33 DO PASS.

REPRESENTATIVE NILSON moved the recommended amendments to HJR 33.

REPRESENTATIVE HARP left the meeting at this time.

JUDY CURTIS, Office of the Legislative Fiscal Analyst, said the percentage used on the coal tax trust interest was 12%, not 10%. Representative Williams agreed and said he had made an error by saying it was 10%.

REPRESENTATIVE NORDTVEDT was present at the meeting at this time.

TERRY JOHNSON, Office of Budget and Program Planning, said the highway bonding amount of \$70 million was not used in figuring the interest on investments amount. Representative Nordtvedt said if the highway bonding bill passes the Senate, we should make a revenue change on the earnings on interest. Chairman Yardley said whatever changes occur after this committee moved on HJR 33 will be shown in the revenue estimates.

The motion to AMEND HJR 33 was voted on and PASSED unanimously.

The motion that HJR 33 DO PASS AS AMENDED was voted on and PASSED with all committee members voting yes except Representative Jacobsen, who voted no.

REPRESENTATIVE HARRINGTON was present at the meeting at this time.

CHAIRMAN YARDLEY went over EXHIBIT 4, amendments offered on HJR 33. Representative Bertelsen said since the bills listed on that sheet have not passed the whole legislature, why put them into HJR 33? Chairman Yardley suggested letting these amendments go until HJR 33 is ready to be passed to the Senate and then, at that time, HJR 33 can be completely updated.

Senate Bill 264

REPRESENTATIVE VINGER moved SB 264 BE CONCURRED IN.

CHAIRMAN YARDLEY said there was an amendment offered to this bill. (Page 2, line 1, following "crushed", insert "and to oiling".) Chairman Yardley said the sponsor of the bill did not think the amendment was necessary.

The motion was voted on and PASSED unanimously.

CHAIRMAN YARDLEY said Representative Dave Brown had said he would carry this bill on the floor of the House.

It was suggested that this committee table all the tax credit bills still in committee. Chairman Yardley said this committee should resolve the small business investment credit issue before the legislature is over. Representative Nordtvedt said he would like to know when it was that the Department of Revenue made the determination that the investment tax went to 0%. Mr. Bucks, Department of Revenue, said the department did not give an opinion to the Office of Budget and Program Planning. They had discussions regarding the fact that the issue is not clear.

House Bill 740

REPRESENTATIVE NORDTVEDT moved HB 740 DO NOT PASS.

REPRESENTATIVE KEENAN said you have three options concerning the investment tax credit:

1. Assume the credit goes back to 0%.
2. Assume the credit goes to 20%.
3. Repeal all investment tax credits.

REPRESENTATIVE NEUMAN made a substitute motion that HB 740 DO PASS. He said we cannot come up with the \$21 million needed to fund the investment tax credit at 20%. This approach makes more sense.

REPRESENTATIVE NORDTVEDT said HB 740 and HB 739 do not go together as a package. By having pay backs like this, you are depriving business people of the legitimate right to depreciate business equipment. People are under a misconception of ACRS. All it does is allow you to take a deduction on machinery earlier.

MR. BUCKS said Section 163 of the Internal Revenue Service codes provided for a depreciation method and involves ACRS. That system was enacted in 1981, after the state legislature met. Congress reduced state taxes by about \$2 billion. The Accelerated Cost Recovery System provides for earlier write-off of equipment. House Bill 740 taxes acceleration faster and does not tax the depreciation. It will also compensate the state for revenue loss outside of Montana. This bill will eliminate the tax break on Montana taxes for investments outside of Montana. For interstate investment purposes, ACRS and the investment tax credit are duplicate